आयकर अपीलीय अधिकरण,'ए' न्याय पीठ,चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष

BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENTAND SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपीलसं./**ITA Nos.: 780 & 781/CHNY/2001**

निर्धारण वर्ष / Assessment Years: 1990-91 & 1991-92

M/s. Indian Overseas Bank, Funds & Accounts Department, 762, Anna Salai, Chennai – 600 002. **PAN: AAACI 1223J**	Vs	The JCIT, Special Range I, Chennai.
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओ रसे/Appellant by : Shri C. Naresh, CA

प्रत्यर्थी की ओर से/Respondent by : Shri Clement Kumar Ramesh, CIT

सुनवाई की तारीख/Date of Hearing : 08.12.2021

घोषणा की तारीख/Date of Pronouncement : 24.01.2022

आदेश /O R D E R

PER MAHAVIR SINGH, VP:

These two appeals by the assessee are arising out of different orders of Commissioner of Income Tax (Appeals)-V, Chennai ITA No.252/98-99 & 251/98-99 vide both order dated 18.12.2000. The assessments were framed by JCIT, Special Range-I, Chennai vide orderdated 22.12.1998 & 23.12.1998 for the assessment years

1990-91 & 1991-92 respectively u/s. 143(3) r.w.s. 147 of the Income Tax Act (hereinafter the 'Act').

2. The first common issue in these two appeals of assessee is as regards to the order of CIT(A) confirming the action of AO in upholding the reopening of assessment.

3. The ld.counsel for the assessee stated that in both the years original assessment was completed by the AO u/s.143(3) of the Act and reopening is beyond 4 years. It is noticed from the grounds of appeal that the assessee has raised identically worded grounds in both the years regarding applicability of proviso to section 147 of the Act, to the assessee's case and the relevant ground raised in ITA No.780/Chny/2001 for the assessment year 1990-91 reads as under:-

> 1.4 The learned CIT(A) failed to appreciate that the appellant had filed detailed statement of reconciliation of interest realized on securities, loss on revaluation of securities and computation of profits u/s 115JA along with return of income and also at the time of assessment, disclosing all material facts necessary for the assessment and hence there is no question of any income chargeable to tax having escaped assessment.

4. Briefly stated facts are that, in both the appeals matter travelled upto Hon'ble Madras High Court and the Hon'ble Madras High Court in TCA Nos.478 & 479 of 2019, order dated 13.10.2020

restored the matter back to the file of the Tribunal by giving following directions:-

> 5. As noticed above, the assessee has specifically raised a plea regarding the validity of the reopening. Infact, the assessee being a Nationalized Bank, does not stand to gain by not raising such a plea, especially when they have got a large team of Legal Experts and Chartered Accountants advising them in these matters. Therefore, the validity of the reopening needs to be considered by the Tribunal on merits and in accordance with law.
>
> 6. In the light of the above, the common order passed by the Tribunal in I.T.A.No.780/Mds/2001 and I.T.A.No.781/Mds/2001 dated 30.08.2011 is set aside and the matter is remanded to the Tribunal to decide the validity of the reopening proceedings.

5. The original assessment for the assessment year 1990-91 was framed by the DCIT, Special Range-I, Madras u/s.143(3) of the Act, vide order dated 29.01.1993. Similarly for the assessment year 1991-92, the original assessment was framed by the DCIT, Special Range-I, Madras u/s.143(3) of the Act, vide order dated 04.03.1994. Subsequently, the ACIT, Large Tax Payer Unit, reopened the assessments in both the assessment years, recorded identical reasons except the quantum. The relevant reasons recorded in assessment year 1990-91 reads as under:-

> "The reasons recorded for reopening the assessment for the AY 1990-91 is given under:-
>
> The assessee bank has been maintaining in its books of accounts under mercantile basis. However, while admitting the interest on securities for Income tax purpose, the assessee bank reduced the 'interest accrued due but

not receipt' from the interest credited to profit and loss account and offers the same on receipt basis. In this way, the assessee bank had reduced a sum of Rs.28,89,48,379/- from the interest on securities for the asst year 1989-90 as interest accrued but not received. In as much as the assessee bank admits the interest on securities on cash basis, the sum of Rs.29,89,48,379/- should have been offered for tax in the assessment for 1990-91 on receipt basis. Failure of the assessee to offer such income in the assessment for 1990-91 resulted in under assessment.

The assessee has claimed a notional loss on account of depreciation on investment to the extent of Rs.14,89,42,190/-. The assessee company has been valuing the closing stock on the basis of cost in its books of accounts whereas it has been valued on the basis of market value or cost price whichever s less for the purpose of Incometax. The method adopted by the assessee is distorting the profit shown for the Incometax. The Hon'ble Calcutta High Court in CIT v/s UCO Bank Ltd (200 ITR 68) stated that the assessee cannot follow one method in accounts and another for tax purposes. In this way, the claim of depreciation amounting to Rs.14,89,42,190/- cannot be sustained in the eye of law. In this way, I have reason to believe that income chargeable to tax has escaped in respect of the aforesaid line."

Similar are the reasons recorded for assessment year 1991-92.

5.1 Accordingly, in view of the above reasons assessments were reopened for assessment years 1990-91 & 1991-92 by issuing notices u/s.148 of the Act, both dated 04.03.1997. Consequent to receipt of notice, assessee objected to reopening of assessment vide letters dated 31.03.1997 but the AO has not disposed off the objections but framed reassessment vide order dated 22.12.1998 u/s.143(3) r.w.s 147 of the Act. Aggrieved assessee preferred an

appeal before the CIT(A). The assessee raised this issue before CIT(A) and CIT(A) dismissed this ground by observing in Para 2.1 as under:-

> "2.1 I have considered the submissions made. It appears that no such plea had been taken by the appellant before the Assessing Officer while filing return in response to notice issued u/s 148. Moreover the provisions of Sec.147 have undergone changes w.e.f 1/4/89 whereby the process of reopening of assessment has been comparatively made easier. As per explanation (1) to Sec.147, the assessment can be reopened where the income chargeable to tax has been under-assessed, or has been assessed at too low a rate or where excessive, relief has been allowed."

Aggrieved, now assessee is in appeal before Tribunal and in view of directions of Hon'ble Madras High Court in TCA Nos.478 & 479 of 2019, order dated 13.10.2020, we decide this issue.

6. Before us, Shri C. Naresh, CA, the ld.AR for the assessee argued that all facts relating to interest on securities, interest accrued but not received and the claim of depreciation on investment was very much available on record of the assessment and there is no failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment. He stated that in the original assessment proceedings, the issue of interest accrued not received claimed as deduction in assessment year 1990-91 but not offered for assessment during the year as well as

claim of depreciation on investment was considered by the AO during the original assessment proceedings. The ld.AR drew our attention to the original assessment order, wherein the interest credited to rebated interest account as in earlier years was added as appreciation in the value of securities as in earlier years. Similar are the facts in assessment year 1991-92. From the very reasons, the ld.AR argued that there is nowhere mentioned that there is failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment and thereby it was argued that reopening of assessment is bad in law. He relied on proviso to section 147 of the Act.

7. On the other hand, Shri Clement Kumar Ramesh, ld.CIT-DR, relied on the reassessment order and the order of CIT(A).

8. We have heard rival contentions and gone through facts and circumstances of the case. We noted that in the reasons recorded by the AO, only charge is that the assessee bank has maintained its books of accounts in mercantile system of accounting and while admitting the interest on securities for income tax purposes, the assessee bank reduced the 'interest accrued due but not receipt'

from the interest credited to profit & loss account and offered the same on receipt basis. The charge is that the assessee bank has reduced the interest credited from the interest on securities for the assessment year 1989-90 as interest accrued but not received. According to AO the interest on securities admitted on cash basis for an amount of Rs.29,89,43,379/- should have been offered for tax in assessment year 1990-91 on receipt basis. Similarly, the claim of notional loss of depreciation on investments to the extent of Rs.14,89,42,190/- was computed by valuing the closing stock on the basis of cost whereas it should have been valued on the basis of market value or cost price whichever is less. But in the present case before us, assessment was framed by the AO u/s.143(3) of the Act and all these details were available before the AO during the original assessment proceedings. The AR particularly took us through the 'Memo of income adjusted for income tax purposes' and drew our attention to Page 57 of assessee's paperbook, where depreciation (loss on revaluation) of investments and interest on investments on Government and other securities accrued but not received is disclosed. Further in notes to computation of income, which is given at page 58 of assessee's paperbook vide para 4, the following is explained:-

> "4. The interest on securities which is offered to tax under the head 'Business' consequent on the amendment to the Income-Tax Act, 1961 is accounted and offered to tax under the head 'Business'. The cash basis of accounting is continued to be adopted for Income-Tax purposes as the same basis was adopted from the inception, instead of accrued basis. As the cash basis of accounting was regularly followed notwithstanding the change in the head of income, viz., from 'Interest on Securities' to 'Business'.

8.1 Even, depreciation (loss on revaluation) of investments as on 31.03.1990 is disclosed at page 59 of assessee's paperbook. The assessee has also computed 'Interest on securities on due and realisation basis' and computed the entire amount which is enclosed in assessee's paperbook at page 63. We noted that these are sufficient details and sufficient disclosure for framing of assessment because these details were available before AO during original assessment proceedings. Once assessment is framed u/s.143(3) of the Act originally for assessment year 1990-91 and reopening notice dated 04.03.1997, which is beyond 4 years and there is no failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment, the reopening cannot be held to be valid. This proposition is supported by the decision of Hon'ble Supreme Court in the case of CIT vs. Foramer France, (2003) 264 ITR 566, wherein the Supreme Court has affirmed the decision of Hon'ble Allahabad High Court in the case of Foramer France vs. CIT, (2001) 247 ITR 436. The decision of Hon'ble Allahabad High Court,

affirmed by Hon'ble Supreme Court, in the case of Foramer France, *supra* is as under:-

> 14. Having heard learned counsel for the parties, we are of the view that these petitions deserve to be allowed.
>
> 15. It may be mentioned that a new Section substituted Section 147 of the Income-tax Act by the Direct Tax Laws (Amendment) Act, 1987, with effect from April 1, 1989. The relevant part of the new Section 147 is as follows : "147. If the Assessing Officer, has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this Section and in sections 148 to 153 referred to as the relevant assessment year) :
>
> Provided that where an assessment under Sub-section (3) of Section 143 or this Section has been made for the relevant assessment year, no action shall be taken under this Section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under Section 139 or in response to a notice issued under Sub-section (1) of Section 142 or Section 148 or to disclose fully and truly all material facts necessary for his assessment for that assessment year."
>
> 16. This new Section has made a radical departure from the original Section 147 inasmuch as clauses (a) and (b) of the original Section 147 have been deleted and a new proviso added to Section 147.
>
> 17. In Rakesh Aggarwal v. Asst. CIT (1997] 225 ITR 496, the Delhi High Court held that in view of the proviso to Section 147 notice for reassessment under Section 147/148 should only be issued in accordance with the new Section 147, and where the original assessment had been made under Section 143(3) then in view of the proviso to Section 147, the notice under section 148 would be illegal if issued more than four years after the end of the

relevant assessment year. The same view was taken by the Gujarat High Court in Shree Tharad Jain Yuvak Mandal v. ITO [2000] 242 ITR 612.

18. In our opinion, we have to see the law prevailing on the date of issue of the notice under Section 148, i.e., November 20, 1998. Admittedly, by that date, the new Section 147 has come into force and, hence, in our opinion, it is the new Section 147 which will apply to the facts of the present case. In the present case, there was admittedly no failure on the part of the assessee to make a return or to disclose fully and truly all material facts necessary for the assessment. Hence, the proviso to the new Section 147 squarely applies, and the impugned notices were barred by limitation mentioned in the proviso."

8.2 Furthermore, the ld.AR relied on the decision of Hon'ble Madras High Court in the case of CIT vs. RPG Transmissions Ltd., [2014] 48 taxmann.com 57, wherein it was held as under:-

"22. We find from the reasons set out in the assessment orders that the assessee has explained an disclosed the entire facts which would constitute a full disclosure and, therefore, we have no hesitation to hold that the reopening of assessment is barred by the proviso to section 147. Further, the facts which emerge from the assessment order as well as the order of Commissioner of Income-tax(Appeals) are well founded and in terms of the principles laid down by the apex court. For the aforesaid reasons, we find that the Tribunal has correctly appreciated the facts in holding that the reopening of the assessment orders are barred by limitation. We find that the Commissioner of Income-tax (Appeals) as well as the Tribunal has concurrently held from the facts that the proviso to section 147 would not apply to the facts of this case and since it is a finding of fact that too which is essentially based on the principles which are gathered from the judgments referred to above, we find that the Assessing Officer has departed from the said principles in arriving at a conclusion that the proviso to section 147 would apply in the instant case. We see no reason to deviate from the finding of fact and, hence, the appeal of the Revenue fails on this ground. Therefore, the first part of the substantial question of law No. 1 in T. C. (A.) Nos. 310 to 312 of 2007 with regard to the invocation of extended period of time under the proviso to section 147 is answered in the affirmative and in favour of the assessee."

9. In view of the above facts and circumstance of case law of Hon'ble Supreme Court in the case of M/s. Foramer France and

Jurisdictional High Court in the case of M/s. RPG Transmissions Ltd., *supra,* we are of the view that there is no whisper in the reasons recorded that there is no failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment and the assessment was framed u/s.143(3) of the Act and reopening beyond 4 years which is against the provisions of the Act. Accordingly, we quash the reassessment proceedings and allow the appeal of the assessee.

10. Similar are the facts in ITA No.781/Chny/2001 for the assessment year 1991-92, which are not disputed by the ld.CIT-DR. Hence, taking a consistent view, we quash the reassessment proceedings and allow the appeal of the assessee.

11. In both the assessment years, there are other arguments made on reopening i.e., change of opinion and the grounds raised on merits. Since, we have adjudicated the issue of reopening i.e., applicability of proviso to section 147 of the Act, and quashed the reopening in both the assessment years, we need not to go into other aspects.

12. In the result, both the appeals of the assessee are allowed.

Order pronounced in the court on 24th January, 2022 at Chennai.

Sd/-	Sd/-
(जी. मंजुनाथ)	(महावीर सिंह)
(G. MANJUNATHA)	**(MAHAVIR SINGH)**
लेखा सदस्य/ACCOUNTANT MEMBER	उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,
दिनांक/Dated, the 24th January, 2022

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant	2. प्रत्यर्थी/Respondent	3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त /CIT	5. विभागीय प्रतिनिधि/DR	6. गार्ड फाईल/GF.